


EXHIBIT 11



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 September 16, 2018, 06:26:50 am

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News: Yes. We have good news! Well, that is to say, we have no news. But it is good news.

The Ur-Quan Masters Discussion Forum

The Ur-Quan Masters Re-Release

General Discussion (Moderator: [Death 999](#))

My take on Stardock

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print

Author

Topic: My take on Stardock (Read 29552 times)

HisDivineShadw
 Zebranky food
 Offline
 Posts: 4
 I love YaBB 1G - SP1!

Re: My take on Stardock
 « Reply #150 on: March 21, 2018, 04:17:33 pm »

My god this is a lot too read.

Many people seem to think Stardock was/is trying stop Star Control from P&F being made. But they from before this dispute said they were not and were indeed excited for them. This did not come out of the blue and smack P&F, It seems calculated.

<https://forums.starcontrol.com/485378/ghosts-of-the-precursors>

Also, If Stardock owns the right to the trademark StarControl, They are liable for all damages. So if P&F Say their game is the True Star Control, and name their Captain "Pepsi" on the SS "Coca-Cola. What do you think will happen to Stardock. Frankly all P&F had to do, was say its a sequel to UQM. That's it. Instead it seems they stuck a knife in Stardocks back.

No one has touch Star control commercially in 20 years. It's not a gold mine people. Call of Duty trademark is a gold mine. Star Control is a risk investment. As beloved as are 25years old game is. ITS 25 YEARS OLD!!! If only the community of long time fans bought the game, there would be zero profit. There is just not enough of us. anyways...

Logged

SirPrimalform
 Zebranky food
 Offline
 Posts: 9

Re: My take on Stardock
 « Reply #151 on: March 21, 2018, 04:20:04 pm »

Quote from: Frogboy on March 20, 2018, 09:15:00 pm

Second: The license to use the old IP in sequels.

This one is very murky. It's not relevant since we aren't using any of the IP. But let's presume that the license agreement has expired. Ok. We aren't using those characters, setting or lore. So it's has no effect either way.

Really? That seems at odds with your stated intentions here. It sounds very much like it is your intention to gain control of the IP and use it in your games, whether SC:O or a future game.

<https://forums.stardock.net/487690/page/4/#replies>

Spoiler (click to show/hide)

Quote from: Hunam_ on March 21, 2018, 04:44:39 am

Quote from: d00dz on March 20, 2018, 03:56:24 pm

Quote from: Hunam_ on March 20, 2018, 03:46:45 pm

^ It's cute how you ignored the rest of Brad's points.

Its cute how you defend Brad everywhere.

Why shouldn't I? He paid money to get SC (tm), FaP didn't. He spent million of dollars and 4 years of daily work to continue SC legacy. What FaP have to show for Ghosts?... Wait, I'm preparing the list. Ok, I'm back. - NOTHING.

Because as far as we know they've only just started a few months ago. How long into development was it before we saw anything of SC:O?

« Last Edit: March 21, 2018, 04:39:26 pm by SirPrimalform »

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HisDivineShadw

Zebranky food



 Offline

Posts: 4

I love YaBB 1G - SP1!



Re: My take on Stardock

« Reply #152 on: March 21, 2018, 04:43:00 pm »

" How long into development was it before we saw anything of SC:O?"

you do not know, you are obviously new.

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Lakstoties

Frungy champion



 Offline

Posts: 62



Re: My take on Stardock

« Reply #153 on: March 21, 2018, 04:49:14 pm »

Quote from: Frogboy on March 21, 2018, 03:14:48 pm

"Whether Brad likes it or not, Ghosts of the Precursors is going to be made as a direct sequel to the Star Control: The Ur-Quan Masters adventure originally created by Fred Ford and Paul Reiche III in 1992. As you stated below, we anticipate resistance. "

Yes, they intend to make a new game based on a previous title they worked on named Star Control: The Ur-Quan Masters. They are not branding their game as a Star Control (tm) game, they are not labeling the product as a Star Control (tm) for identification purposes. They referencing a product to which they HAVE copyrights for... As evidence by a post on your own site in the lower left hand corner of the second picture:
<https://www.starcontrol.com/article/485810/star-control-ii-25th-anniversary---on-the-shoulders-of-giants>

Quote from: Frogboy on March 21, 2018, 03:14:48 pm

So on the one hand, we absolutely would have been willing to take down the DOS games if they really felt strongly. But they not only refused to find some way to undo the harm they had done by creating market confusion with their announcement, they made it clear that they would continue to promote Ghosts as a direct sequel to Star Control and fully anticipated that we would have to take legal action.

Regardless of their feelings and Stardock's position... The DOS games SHOULD be taken down by Stardock. Stardock does not own the copyrights and as evidenced by Atari and GOG, Stardock does not have the distribution rights. So, Stardock is actively and knowingly engaging in copyright infringement as a retaliatory action against Fred Ford and Paul Reiche III for matters unrelated to the copyright. This is how it presents itself based on what has been presented. Stardock continues to do X due to Y.

Quote

All this could have been avoided.

Indeed. When the DMCA noticed was filed, Stardock should have complied and stopped selling the DOS games. Stardock then could have asked for references to Star Control (tm)

be kept to a minimum. Problem solved.

But now Stardock is filing trademarks for elements within the realm of Fred Ford and Paul Reiche III's copyrighted intellectual property. Which is why many raise a brow at statements like this:

Quote

So I have a pretty healthy respect for both intellectual property rights and the emotional attachments people can have form with their creations.

Stardock keeps on trying to portray themselves as reasonable and amicable folks, but then they conduct activities that run absolutely counter to their portrayal. This is why a lot of people are taken back by Stardock at the moment. It's like watching a speech from a third world dictator who pauses after a long part praising his leadership towards furthering humans rights... Then the echoes of gun fire from the nearby firing squad ring out. That's some serious cognitive dissonance going on.

 Logged

Frogboy

Many bubbles

★ ★ ★
Offline

Posts: 226



Re: My take on Stardock

« Reply #154 on: March 21, 2018, 04:49:20 pm »

They have no legal rights to the names. Only the copyrights of things that they created.

Given the dispute, it is has become abundantly clear that we have no alternative but to ensure that all trade-markable items already associated with Star Control are protected to prevent confusion or dilution.

Given that Paul and Fred have already tried to cancel our trademark, we became more motivated than ever to ensure that our considerable investment has as many vectors of protection as possible.

« Last Edit: March 21, 2018, 04:52:35 pm by Frogboy »

 Logged

Hunam_

Zebranky food

★
Offline

Posts: 5



Re: My take on Stardock

« Reply #155 on: March 21, 2018, 04:54:58 pm »

Quote from: SirPrimalform on March 21, 2018, 04:20:04 pm

Because as far as we know they've only just started a few months ago. How long into development was it before we saw anything of SC:O?

Well, you don't know much then, do you? The open to founders development started in 2015. I'm sure the pre-production stage started even earlier. You also **assume** that Ghosts development started.

Spoiler (click to show/hide)

« Last Edit: March 21, 2018, 04:57:09 pm by Hunam_ »

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SirPrimalform

Zebranky food

★
Offline

Posts: 9



Re: My take on Stardock

« Reply #156 on: March 21, 2018, 04:55:37 pm »

Quote from: HisDivineShadw on March 21, 2018, 04:43:00 pm

" How long into development was it before we saw anything of SC:O?"

you do not know, you are obviously new.

What has that got to do with anything? I'm asking a question because it's relevant to Hunam_'s point. SC:O has supposedly been in development for four years, when did we start seeing the development of the game?

If you aren't going to answer that question I'm not sure why you're replying to me.

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SirPrimalform

Zebranky food



Offline

Posts: 9



Re: My take on Stardock

« Reply #157 on: March 21, 2018, 05:02:49 pm »

Quote from: Hunam_ on March 21, 2018, 04:54:58 pm

Quote from: SirPrimalform on March 21, 2018, 04:20:04 pm

Because as far as we know they've only just started a few months ago. How long into development was it before we saw anything of SC:O?

Well, you don't know much then, do you? The open to founders development started in 2015. I'm sure the pre-production stage started even earlier. You also **assume** that Ghosts development started.

Spoiler (click to show/hide)

Thank you, that was exactly the point I was trying to prove. 2015 is 3 years ago, potentially much less depending on when in the year we're talking. It's also highly unusual to start sharing that early in development (which is cool of Stardock to do). Given that we have no idea when development on GotP started in earnest (it may have been as late as the time of the announcement) and that it's not usual to share the development process, what reason do you have to suggest that the game doesn't and will never exist?

Quote from: Frogboy on March 21, 2018, 04:49:20 pm

They have no legal rights to the names. Only the copyrights of things that they created.

Given the dispute, it has become abundantly clear that we have no alternative but to ensure that all trade-markable items already associated with Star Control are protected to prevent confusion or dilution.

Given that Paul and Fred have already tried to cancel our trademark, we became more motivated than ever to ensure that our considerable investment has as many vectors of protection as possible.

You keep flip-flopping on this. First you weren't going to use original races, then you were ("And yes, given these events, future Star Control games will have the Ur-Quan, Spathi, etc. in them.") then in this thread you again have no intention of using them! Why are you trademarking names you have no intention of using?

« Last Edit: March 21, 2018, 05:06:46 pm by SirPrimalform »

 Logged

Frogboy

Many bubbles

Offline

Posts: 226



Re: My take on Stardock

« Reply #158 on: March 21, 2018, 05:25:39 pm »

If only there was some way on the forum to look at what people have posted and when...

<http://forum.uqm.stack.nl/index.php?topic=5463.msg71121#msg71121>

2013.

Quote

You keep flip-flopping on this. First you weren't going to use original races, then you were ("And yes, given these events, future Star Control games will have the Ur-Quan, Spathi, etc. in them.") then in this thread you again have no intention of using them! Why are you trademarking names you have no intention of using?

We had chosen not to have the Ur-Quan, Spathi, etc. in Origins out of respect for Paul and Fred's wishes. This dispute has changed that position. Now, future Star Control games will

have aliens associated with Star Control. The Spathi and Orz and so on will absolutely appear in future Star Control games. They won't appear in Origins as we are too far into development.

« Last Edit: March 21, 2018, 05:28:48 pm by Frogboy »

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Lakstoties

Frungy champion



 Offline

Posts: 62



Re: My take on Stardock

« Reply #159 on: March 21, 2018, 05:30:33 pm »

Quote from: Frogboy on March 21, 2018, 04:49:20 pm

They have no legal rights to the names. Only the copyrights of things that they created.

The names are unique terms created by Fred Ford and Paul Reiche III that given the context of the rest of the work are copyrighted. Such unique terms have been used in copyright cases to determine whether a work is derivative or not. There are many terms that Paizo cannot use for Pathfinder that are within the IP portfolio of Wizards of the Coast for Dungeons and Dragons due to copyright. Common words cannot be copyrighted, but uniquely created terms within context can be considered part of a copyrighted work.

Quote

Given the dispute, it is has become abundantly clear that we have no alternative but to ensure that all trade-markable items already associated with Star Control are protected to prevent confusion or dilution.

By trademarking terms Stardock does not own the copyrights for, nor has ever used in trade. By misusing the trademark system to enact retaliatory actions against another party, which there articles against in trademark law. By trademarking components not associated with Stardock's Star Control (tm) trademark. Stardock's trademark for Star Control (tm) is just that... A text mark "Star Control" that is designed to label computer gaming products. It's right there in documentation of the trademark. There is nothing else associated with it.

Quote

Given that Paul and Fred have already tried to cancel our trademark, we became more motivated than ever to ensure that our considerable investment has as many vectors of protection as possible.

Stardock used the trademark against them. If one uses a stick to hit someone, one should not be surprised if that someone tries to take the stick away and break it to prevent getting hit by it in the future. Now it seems Stardock's tactic to the threat of getting the stick broken, is it get as many sticks as possible...

 Logged

Frogboy

Many bubbles



 Offline

Posts: 226



Re: My take on Stardock

« Reply #160 on: March 21, 2018, 05:37:38 pm »

Quote

The names are unique terms created by Fred Ford and Paul Reiche III that given the context of the rest of the work are copyrighted. Such unique terms have been used in copyright cases to determine whether a work is derivative or not. There are many terms that Paizo cannot use for Pathfinder that are within the IP portfolio of Wizards of the Coast for Dungeons and Dragons due to copyright. Common words cannot be copyrighted, but uniquely created terms within context can be considered part of a copyrighted work.

They are welcome to try to challenge the trademarks then. Unfortunately, the USPTO is unlikely to agree with you.

 Logged

Elestan

Smell controller



 Offline

Posts: 377

Re: My take on Stardock

« Reply #161 on: March 24, 2018, 11:14:01 pm »

(Moving this here from [the PoNAF forums](#) now that we're back up.)

Okay, so I've spent a good chunk of an afternoon reading legal briefs, including [Stardock's](#)



First Amended Complaint. I'm sure there's a clinical diagnosis for people who do such things voluntarily, but anyway, I think I've managed to extract some of Stardock's line of legal argument. As always, **I Am Not A Lawyer**; these are just my guesses based on a layman's understanding.

The first major point I see in Stardock's argument centers on their paragraph 16, and I think I've traced their logic to the **Accolade agreement** section 3.3 (Sequels), which has the same "sole and exclusive right" wording Stardock uses there. I believe that Stardock is trying to read this section as being a perpetual grant of right. This would give Accolade/Atari/Stardock the sole and perpetual right to create sequels to Star Control, and explain a lot of the claims I've seen Brad use on the various forums.

Arguments for why Section 3.3 could be considered not to terminate:

- It does not directly specify a termination date.
- It does not directly call the grant of right a "license" (Stardock explicitly argues that it is separate from the License Agreement).
- Section 2.2 terminates the agreement with respect to "sales, licensing and sublicensing" when royalties drop below \$1000. If 3.3 isn't a license, it could be at least partially immune to this termination condition.
- Section 7.2 specifies that when the agreement terminates, "licenses and sublicenses" granted by it are reassigned to Paul. If 3.3 isn't a license, it could be considered immune to this effect.

Arguments for why Section 3.3 could still be considered to terminate:

- Section 3.3 is a part of Section 3, which is titled "EXCLUSIVE LICENSE". Arguably, this means that the all the rights in its subsections should be considered part of the License Agreement, which means they would revert to Paul on Termination per Section 7.2.
- Even if 3.3 is not a license, Section 2.2 still terminates the agreement with respect to Sales, which would mean that Stardock could do everything 3.3 talks about, except actually sell anything.
- Section 7.1, the Bankruptcy provision, reverts "all rights to all Work or Derivative Work" to Paul. This would have been triggered by Atari's bankruptcy, and would appear to affect rights whether or not they are part of a License Agreement.

The second major point I see centers on Star Control III, and seem to be drawing several parts of their case out of interactions relating to that game:

* In paragraph 32, Stardock makes an noteworthy definition: They define the "Star Control Copyrights" specifically as the copyrighted materials in Star Control III. This is probably because that's the only part that they have a copyright interest in.

Accolade registered the copyright to SC3, and Stardock's position seems to be that that registration gives them ownership of all of the assets in that title, including art, music, etc., even if they are derived from SC2 (so, the SC3 version of the Ur-Quan, for example). I think the key question here is how the court will interpret the Accolade agreement paragraph 11.4 (Ownership). Stardock seems to be saying that since Accolade made all of the art in the game, that art should be considered a "Derivative work by Publisher", which Accolade would own. But that paragraph also says that such ownership is "subject to Developer's copyright in the Work" ("the Work" being SC2 and its setting/assets), and I'm not sure how to parse that.

This is an interesting argument, and I'm not sure how a court will decide it. If it were to go Stardock's way, that would mean that they would be able to continue to use the classic SC properties, as long as they were derived from the SC3 versions, and not the SC2 versions. But a counterargument is that Accolade certainly didn't seem to think they could do that, as evidenced by the fact that they later paid Paul for an additional 3-year license for those same rights.

* Paragraph 56 argues that P&F cannot claim to be the "Creators of Star Control",

because they would unfairly be taking credit for Star Control III, which they were not involved in. While that might seem a plausible argument to someone unfamiliar with the franchise, it seems disingenuous to me, because anyone who knows better would realize that nobody, least of all Paul&Fred, would want "credit" for SC3.

* Paragraph 59 (and 98-101) complain that F&P were selling SC3 in violation of Stardock's copyright. Which could be true...but it seems like F&P had gotten permission from Atari back when Atari owned the copyright, and Stardock had never revoked that permission until last October. Stardock never alleges that F&P infringed their copyright after being notified that such permission was revoked, so I'm not sure there's any substance to these complaints.

Moving on to other issues, Stardock's argument for having a trademark to "The Ur-Quan Masters" seems to be that because Accolade held the trademark rights to SC2, it not only owns the "Star Control" registered trademark, but also any common law trademarks that the game might have, specifically including the game's subtitle, but also claiming any name, graphic, or design used by Accolade to market or publish the old games.

But I see a few problems with this:

* This seems like a really expansive view of trademarkability to me; I'm not aware of any precedent for saying that every name and distinguishing feature of a product becomes its own trademark, and none of these things were marked (TM) in the game. It would surprise me if one could claim trademarks so facily.

* Moreover, even if they were to have been trademarked, I think the UQM project's uncontested use of them for so many years would dilute whatever protection they had into unenforceability.

* Also, there's going to be a conflict here between Paul's copyright rights and Stardock's trademark rights. I have no idea how to resolve those two areas of law.

Stardock also argues in para 26 that because they have been selling the classic SC games on GoG, they have been using all of these marks in recent commerce, thereby keeping them valid.

The problem here is that this only works if Stardock can show that it had the right to sell those games at all. If all of the distribution rights expired before Stardock purchased them, then those sales were all illegal. Some of Brad's posts have talked about the restoration of the DMCAed games on GoG as though that were a ruling on the merits of Stardock's ownership. But a restoration by DMCA counterclaim is not a ruling on the merits; it just means the the host (GoG) is allowed to leave the accused infringing work up until a court decides the ownership question.

Paragraph 55 essentially argues that Paul doesn't have the copyright to the parts of SC2 that he didn't do personally.

The issue here is even though Paragraph 11.4 of Paul's contract gives all of Accolade's copyrights in SC2 to Paul, if Paul brought in outside people to work on the game (artists, composers, etc.) without having them sign a copyright assignment or written "work-for-hire" agreement, those people would retain personal ownership of the copyright of their respective contributions.

A couple final observations on the amended complaint:

* There were many places where they added the escape phrase "Upon Information and Belief" to assertions that were previously lacking it. This is the difference between saying "I swear that X is true" and "I think that X is true", so that you don't get hauled up on perjury charges if it's false. That doesn't mean that they're

deliberately saying anything untrue, of course; it could just be standard lawyer safe practice. But it does give them more room to say things they're not sure of.

* There are an awful lot of assertions of "irreparable harm" in places where it seems like monetary damages would be perfectly sufficient to cure the harm.

« Last Edit: March 26, 2018, 05:55:25 pm by Elestan »

 Logged

tingkagol

Zebranky food



Offline

Posts: 36



Re: My take on Stardock

« Reply #162 on: March 25, 2018, 09:27:18 am »

A good read as always, Elestan.

But things are moving pretty quickly as Dogar and Kazon have released another "potshot" at the void via their blog:

<https://www.dogarandkazon.com/blog/2018/3/24/nope-and-nope>

Stardock rejected it, apparently. In addition to that, they released all the settlement documents in its entirety. I'm still waiting for Brad's take on this before I could form an opinion.

 Logged

Serosis

Enlightened



Offline

Gender: 

Posts: 1248



Re: My take on Stardock

« Reply #163 on: March 25, 2018, 09:56:02 am »

Seems pretty cut & dry why Stardock didn't take it.

Article 1(A) Would give P&F free reign to completely destroy what SC:Origins was meant to be. In turn destroying any semblance of a decent game, making it moot for Stardock to have even bought the rights to Star Control.

Anything that P&F didn't like that they can say *might* violate their copyright would be out in an instant, after that it would be an uphill battle to have the Origins storyline stay intact, considering how it's based around a multiverse where anything can happen and franchises could collide within the Star Control Universes.

I'm sure they also wouldn't want Stardock to release the modding tools to make modding UQM and Kessari into SC:O any kinds of easy.

I mean, I've already got a completed SCII starmap ready to go once I get ahold of the upcoming Alpha, and I'm working on flattening out the Kessari starmap as well. Even if I didn't have the mod tools I currently have it's easy enough to make your own since it's all .xml files.

The ship designer would probably be the first thing to go if Stardock acquiesced with this settlement. Which would be a huge bummer, but not a game killer. Would have to start looking into learning Blender, and picking the file formats apart to figure out a way to import models in.

I may have read 1(A) wrong, but I sure as hell ain't trusting their summary of it. Just like Elestan picks apart Stardock's legal documents I'm sure as hell going to pick apart P&F's.

Can't have it **all** be one-sided here.

 Logged

The artist formerly known as Kohr-Ah Death.

Get your MegaMod [HERE](#)

tingkagol
 Zebranky food

 Offline
 Posts: 36



Re: My take on Stardock
 « Reply #164 on: March 25, 2018, 11:50:21 am »

It seems to me Paul's settlement terms brings them back to their original contention - which was their disagreement to Stardock's assertion that Paul needs the former's approval to make Ghosts. Which then brings us back to their exhibits, the 1988 agreement texts, etc.

On the other hand, Stardock's settlement terms is purely based off of the SC trademark infringement damages- the extent of which, in my opinion, is incredibly overstated to the point that Paul has to give up their IP. (Not to mention the brunt of the backlash was Stardock's own doing). It is an unreasonable settlement designed to be rejected and in effect forcing Paul to fend off Stardock's new trademark applications for all the SC2 aliens in court.

« Last Edit: March 25, 2018, 12:24:09 pm by tingkagol »

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